

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LARRY PHILPOT, :
 :
 Plaintiff, :
 :
 v. : 17 Civ.
 :
 HNGN INC., :
 :
 Defendant. :

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COMPLAINT AND JURY DEMAND

Plaintiff Larry Philpot (“Philpot”), through his undersigned counsel, for his complaint against defendant HNGN Inc. (“HNGN”), alleges:

Nature of the Action

1. Philpot is bringing this action to recover damages resulting from HNGN’s infringement of Philpot’s registered copyright in a photograph of American singer and songwriter Randy Travis (the “Photograph”).

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over the claim asserted in this action pursuant to 28 U.S.C. § 1331 and § 1338(a) because it arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*

3. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a).

4. This Court has personal jurisdiction over HNGN because it is a New York corporation with its principal place of business in the State of New York.

The Parties to this Action

5. Philpot is a natural person having a usual place of business at 12527 Winding Creek Lane, Indianapolis, Indiana 46236. Philpot is a professional music photojournalist.

6. HNGN is a New York corporation with its principal place of business at 40 Wall Street, Floor 28, New York, New York 10005. HNGN is engaged in the business of generating advertising revenue from click advertisements on its website, HNGN.com.

Statement of Facts

A. Philpot's Ownership of the Photograph

7. Philpot created the Photograph. A true and correct copy of the Photograph is attached as Exhibit A.

8. Philpot is the author of the Photograph and has, at all times, been the sole owner of all right, title and interest in the copyright in the Photograph (the "Copyright").

9. Philpot registered the Copyright, in a collection of photographic works, with the United States Copyright Office. On or about August 21, 2013, Philpot received for those works Copyright Registration Number VAu 1-164-624, which is valid and enforceable. The certificate of registration is attached as Exhibit B.

B. HNGN's Infringing Activities

10. Upon information and belief, on or about September 22, 2014, an employee of HNGN (i) made a copy of the Photograph on a computer, (ii) uploaded the Photograph to the URL <http://images.hngn.com/data/thumbs/full/34666/570/0/0/0/randy-travis.jpg> (the "Photograph URL"), (iii) published an article entitled *Randy Travis Battles Back From Stroke With 'Heart of a Warrior' to Talk Again* (the "Travis Article") to the URL www.hngn.com/articles/43274/20140922/randy-travis-battles-back-from-stroke-with-heart-of-a-warrior-to-talk-again

warrior-to-talk-again.htm (the “Travis Article URL”), and (iv) using HTML source code, caused the Photograph at the Photograph URL to appear with the Travis Article. Upon information and belief, HNGN’s purpose in causing the Photograph to appear with the Travis Article was to improve the quality of the website, and encourage users to click on HNGN content and ads, generating advertising revenue for HNGN. A true copy of the Photograph appearing with the Travis Article is attached as Exhibit C.

11. Upon information and belief, at all relevant times, HNGN has been the registrant for the domain name HNGN.com, and has owned and controlled the server for the domain name “HNGN.com” (the “Server”).

12. HNGN never licensed the Photograph from Philpot, or had Philpot’s permission to copy or display the Photograph. HNGN did not credit Philpot for the Photograph.

A CLAIM FOR RELIEF
(Infringement of the Copyright -- 17 U.S.C. §§ 106, 501)

13. Philpot incorporates by reference each allegation contained in Paragraphs 1 through 12 above.

14. Philpot owns the Photograph and the registration of the Copyright, which are valid and enforceable.

15. HNGN infringed Philpot’s Copyright in at least the following ways.

A. Liability for Reproduction under 17 U.S.C. § 106(1)

16. HNGN infringed the Copyright by reproducing the Photograph on a hard drive, and on the Server at the Photograph URL and/or the Travis Article URL, in violation of 17 U.S.C. § 106(1).

B. Liability for Public Display under 17 U.S.C. § 106(5)

17. HNGN infringed Philpot's Copyright by publicly displaying the Photograph on the Server at the Photograph URL, and/or the Travis Article URL, in violation of 17 U.S.C. § 106(5).

18. HNGN is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, and/or use the Photograph.

19. Upon information and belief, the foregoing acts of infringement by HNGN have been intentional and/or in reckless disregard to Philpot's rights.

20. As a direct result of HNGN's infringement of Philpot's Copyright, Philpot is entitled, pursuant to 17 U.S.C. § 504(b), to his damages and/or HNGN's profits from the infringement.

21. Alternatively, Philpot is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) of up to \$150,000 per work for the willful infringement of the Copyright.

22. Philpot is entitled, pursuant to 17 U.S.C. § 505, to his costs including reasonable attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Philpot respectfully requests judgment as follows:

A. That HNGN be adjudged to have infringed the Copyright in violation of 17 U.S.C. §§ 106 and 501;

B. That Philpot be awarded the greater of (a) Philpot's actual damages and HNGN's profits attributable to its infringement of Philpot's copyright, or (b) alternatively, statutory damages of up to \$150,000 per work, pursuant to 17 U.S.C. § 504, the precise amount to be determined by the trier of fact in this action;

C. That HNGN, and its officers, directors, employees, agents, representatives, affiliates, subsidiaries, distributors, licensees and all persons or entities acting in concert or participation with it, be enjoined from copying, reproducing, distributing, adapting, or publicly displaying the Photograph, without authorization, pursuant to 17 U.S.C. § 502.

D. That Philpot be awarded his costs, including attorneys' fees pursuant to 17 U.S.C. § 505; and

E. That Philpot be granted such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Philpot hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: New York, New York
June 19, 2017

DUNNEGAN & SCILEPPI LLC


By  _____
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ac@dunnegan.com
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New York, New York 10118
(212) 332-8300

Exhibit A



Exhibit B

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number

Vau 1-164-624

Effective date of
registration:

August 21, 2013

Title

Title of Work: Concert photographs through August 15, 2013

Completion/Publication

Year of Completion: 2013

Author

■ **Author:** Larry Gene Philpot

Author Created: photograph(s)

Work made for hire: No

Citizen of: United States

Domiciled in: United States

Year Born: 1953

Copyright claimant

Copyright Claimant: Larry Gene Philpot

12527 Winding Creek Lane, Indianapolis, IN, 46236

Certification

Name: Larry G. Philpot

Date: August 15, 2013

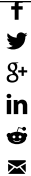
Registration #: VAU001164624
Service Request #: 1-979744461



0000VAU0011646240101

Larry Philpot
8125 Halyard Way
Indianapolis, IN 46236 United States

Exhibit C



Sep 22, 2014 06:47 PM EDT

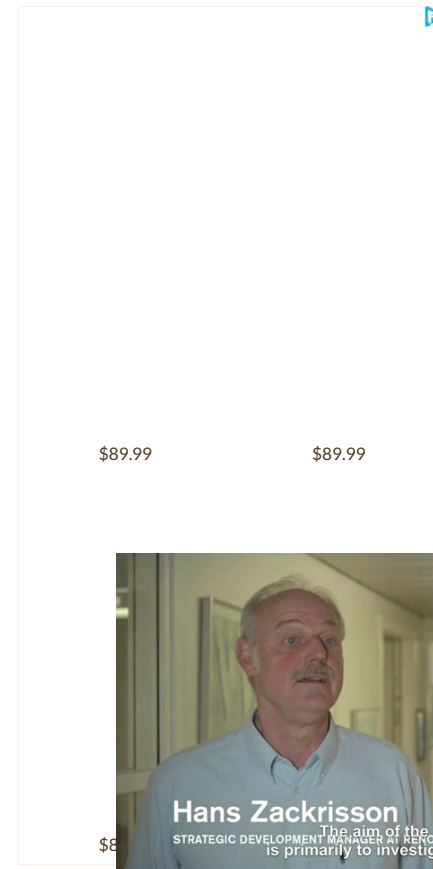
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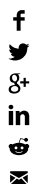


Randy Travis, who suffered a debilitating stroke last year, has the "heart of a warrior," and he is not shying away from the challenge of talking again.

The "Forever and Ever, Amen" singer made a rare public appearance at the Four Rivers Outreach Banquet at the North Texas Regional Airport 60 miles north of Dallas on Sept. 18, where he was seen walking with the help of a cane.

Travis suffered a [stroke](#) in 2013, after being hospitalized for viral cardiomyopathy and congestive heart failure. As of June, the Grand Ole Opry member was still [unable to speak](#), but his fiancée, Mary Davis, told WFAA-TV that the country star is not giving up.





"He's never, never shied away from it, never asked, 'Why me?'"

"Every day we go to speech therapy and physical therapy and occupational therapy," Davis added. "We're learning words and phrases; learning to sing. Of course, the music and the songs come easy for him ... he's working on it. He's got the

heart of a warrior, and he doesn't stop."

Travis may still be recovering, but that hasn't stopped him from sharing new music with his loyal fans. He released the single "Don't Worry 'Bout Me" in July, along with an accompanying [video](#). The song is from his "*Influence, Vol. 2: The Man I Am*" album, which can be ordered [here](#).

Travis' health issues aren't the only problems the singer has faced in recent years. He was arrested in February 2012 for public intoxication and in August of that same year for simple assault, in which he was [sentenced](#) to do community service.

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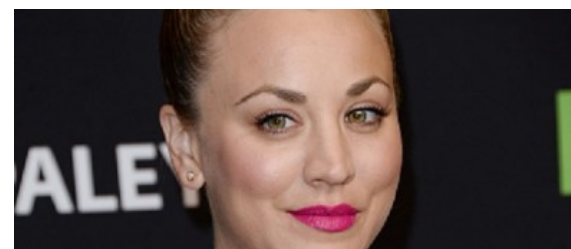
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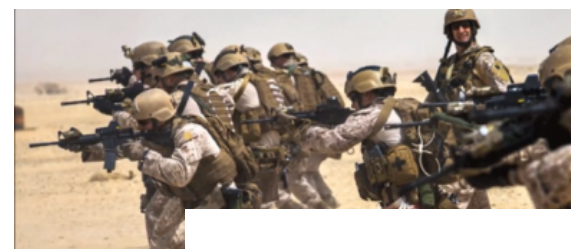
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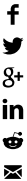


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Hans Zackrisson
The aim of the project is primarily to investigate the scope



The Scene

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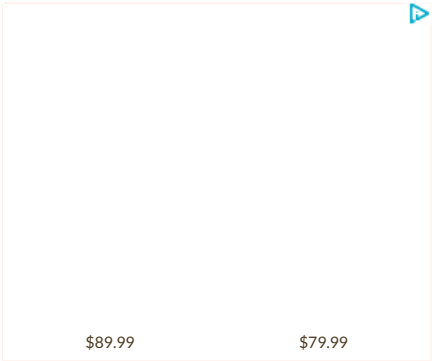
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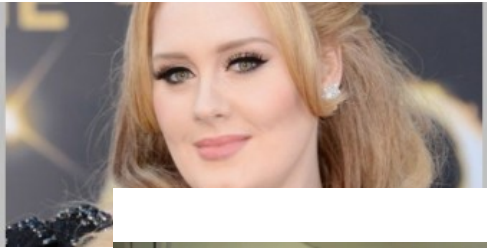
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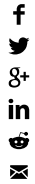
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